

1 the assignment. Which are good questions, but
2 I don't know how -- I'm going to ask Mr. Floyd
3 to give his side of the story, if he will, but
4 I'm -- okay, I've said enough.

5 I'm still not convinced that the
6 Wilks organization -- The Wilks organization
7 may have a problem with the Commission, on
8 your theory, but I'm not sure it's in the
9 context of this case.

10 That's all I'm saying. But let's
11 -- maybe it is. There might have to be some
12 kind of an amendment to the hearing
13 designation order to officially bring them in,
14 or to technically bring them in. Let me just
15 stop with that. This is all -- I'm just
16 talking about way, way off in hypotheticals-
17 land.

18 Mr. Floyd, before I say too much
19 more and confuse you, do you understand what
20 you are being asked? How did all this happen
21 that your wife got the power of attorney and
22 signed on your behalf on this assignment

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1 document? Or, first of all, did that happen
2 that way? Is that the way that it happened?

3 MR. FLOYD: Well, Your Honor, I
4 can explain that to you. I was incarcerated,
5 and my wife secured a power of attorney for
6 all matters. Certainly not just this matter.
7 I was incarcerated, and I think that, if we
8 had depositions, or if Your Honor asked me
9 questions as to why I was incarcerated, it's
10 certainly a matter of record.

11 It was front page news in northern
12 Nevada, southern Nevada, and most of
13 California, from Los Angeles to --

14 JUDGE SIPPEL: Well, we're not
15 interested in that right now. We are
16 interested in the role that your wife played
17 with respect to this assignment, and what
18 knowledge you had of what she was doing.

19 MR. FLOYD: Okay. I have
20 absolutely no knowledge, nor does she, of any
21 type of, quote, "duping" to Wilks. I am not
22 upset with Wilks.

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1 They perhaps could be, in this
2 scenario, I'm not judge and jury, but they
3 perhaps could be in a position where I don't
4 understand why my translator is still being
5 utilized by them to this date.

6 JUDGE SIPPEL: Why your what is
7 being utilized?

8 MR. FLOYD: I beg your pardon?

9 JUDGE SIPPEL: What is being
10 utilized?

11 MR. FLOYD: The translator itself,
12 102.5, okay?

13 JUDGE SIPPEL: All right. Go
14 ahead.

15 MR. FLOYD: It is being utilized.
16 I received a forfeiture notice by regular
17 mail, because the old address -- when I am
18 released from prison, I start trying to find
19 out what's taking place with the translator.
20 Because I heard that the transaction where
21 Wilks was purchasing it had fallen awry. It
22 had fallen apart.

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1 As a matter of fact, the law firm
2 sitting in your courtroom now has requested
3 that their earnest money be refunded, and yet
4 as of Friday of last week, a gentleman
5 notified me and said "Do you know that they're
6 still giving out information to people to
7 listen to 102.5 in Carson City?"

8 My wife nor I, nor anyone that I
9 am aware of ever told Wilks as per what I
10 received in the mail from them that I was in
11 an accident or in a coma or something. I have
12 never heard of that in my entire life.

13 I am not putting the blame on
14 anyone, I know better than that, until all
15 discovery is made by Your Honor, the FCC, and
16 everyone else. I'm not accusing anyone.

17 JUDGE SIPPEL: No, I understand
18 that. That's getting beyond what my question
19 is, way beyond it. I simply want to know that
20 there was -- that your wife, as your attorney,
21 attorney in fact, she had your power of
22 attorney.

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1 She signed a document which had to
2 do with the assignment, or the proposed
3 assignment, of your license, or the station,
4 rather, to the Wilks Group. And I'm just
5 asking you, is that true, she did that?

6 MR. FLOYD: She did do that. Yes,
7 sir.

8 JUDGE SIPPEL: All right. And
9 what were the circumstances? Did you know
10 that she was doing it at the time? Let me ask
11 that question.

12 MR. FLOYD: At the time, she told
13 me on the phone that she -- that they had made
14 an offer, and that Mr. John Shroeder was
15 negotiating with Wilks for the sale of that
16 license to Wilks.

17 JUDGE SIPPEL: And did you say --
18 what did you tell her to do? Or what did you
19 tell --

20 MR. FLOYD: Quite frankly, my
21 exact words were "go with your heart."

22 JUDGE SIPPEL: So she had the

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1 authority to sign that document?

2 MR. FLOYD: Yes, sir. She did.

3 JUDGE SIPPEL: So then, if that's
4 the case, that you intended to go forward with
5 that deal --

6 MR. FLOYD: Yes, sir. I did.

7 JUDGE SIPPEL: And it would be for
8 remuneration. That is, it would basically be
9 a purchase agreement, correct?

10 MR. FLOYD: That is correct, sir.

11 JUDGE SIPPEL: All right. So, at
12 what point do you feel that you have been,
13 quote, "duped"?

14 MR. FLOYD: Number one, I was told
15 then, later -- I'm not sure when, because I've
16 been away for three years, okay? Almost three
17 years. But I was then told that the sale,
18 months and months and months ago, that the
19 sale fell apart.

20 Wilks was no longer interested in
21 completing the transaction, okay? So there
22 was a lot more concerns on my plate,

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1 obviously, than this translator sale to Wilks
2 Communications. So it wasn't something that
3 we ever talked about.

4 And then when I got out, I started
5 sending emails to FCC, finding out what's the
6 status of the translator, because my wife
7 received a bill at the end of 2009 from FCC
8 for approximately four hundred dollars for
9 some monies due FCC.

10 And I told her, although I was
11 still not released yet, I told her to pay
12 that, because for the benefit of everyone I
13 wanted to come back and sell that translator
14 or utilize it for the benefit of the
15 community, and also those people who were
16 counting on me upon my incarceration.

17 So she paid that bill, and I still
18 to that date kept emailing trying to find out
19 the status.

20 JUDGE SIPPEL: Emailing who? The
21 Commission? The FCC?

22 MR. FLOYD: Yes, sir.

1 JUDGE SIPPEL: Okay.

2 MR. FLOYD: They have copies. As
3 my wife said at the time on the phone, she was
4 paying for a renewal for the license and
5 wanted to know what to do, because money is so
6 extremely tight for us based on what happened
7 to me.

8 But I told her, for everyone's
9 sake, not mine, but for everyone's sake, to
10 pay that. And she did, and that check was
11 cashed.

12 JUDGE SIPPEL: All right. And how
13 much was that for?

14 MR. FLOYD: Approximately four
15 hundred dollars.

16 JUDGE SIPPEL: That's right. You
17 mentioned that. And what were your dates of
18 incarceration? From when to when? Month and
19 day?

20 MR. FLOYD: I self-surrendered,
21 per the plea bargain. I self-surrendered June
22 first of 2007.

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1 JUDGE SIPPEL: All right.

2 MR. FLOYD: And then I was
3 released in November to a halfway house.

4 JUDGE SIPPEL: Of what year?

5 MR. FLOYD: Of 2009.

6 JUDGE SIPPEL: Okay. A halfway
7 house.

8 MR. FLOYD: 2009. And then I was
9 released, if you will, sir, to probation just
10 about two or three months ago.

11 JUDGE SIPPEL: All right. What
12 does that come out to, two or three months
13 ago? Is that July, thereabouts?

14 MR. FLOYD: No, sir. It would be
15 before that. Roughly May, let's say. Okay?

16 JUDGE SIPPEL: Roughly May of
17 2010, you are released on probation, and you
18 have to report regularly to a probation
19 officer. Is that how that works?

20 MR. FLOYD: Yes, sir. Once a
21 month.

22 JUDGE SIPPEL: That's all I need

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1 to know. That gives us the general idea of
2 where things stand and how it got that way.
3 Date-wise, we're okay.

4 All right, now I'm going to ask --
5 if you're willing to go forward with this, I'm
6 going to turn it over to Mr. Zaragoza, to see
7 if he has any more questions. There's also
8 Bureau counsel. Do you want me to have Bureau
9 counsel go first?

10 MS. LEAVITT: Thank you, Mr.
11 Zaragoza. Just to help clarify things, Your
12 Honor -- and you're right. Obviously, the
13 Bureau's concern in filing their opposition
14 was potentially, if there were issues
15 implicating Wilks's potential abuse of
16 process.

17 And our goal was, if we retained
18 them as a party, at least through discovery,
19 we would know whether or not there was
20 sufficient basis to suggest possible
21 enlargement of issues. That, as you pointed
22 out, is very hypothetical, very far down the

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1 line.

2 And based on information that Mr.
3 Floyd has just shared, you of course will take
4 it into consideration. But the email that Mr.
5 Floyd sent to Mr. Hutton on August twenty-
6 seventh, and I will just read in part. He was
7 responding to Mr. Hutton's information about
8 having sent the forfeiture order to Mr. Floyd,
9 because Mr. Floyd had apparently not updated
10 his address in CBBS.

11 Mr. Floyd says "I want to also go
12 on record that from 2007 until my first email
13 of late 2009 or early 2010 to the FCC, I have
14 had no contact with FCC, so in no way misled
15 anyone."

16 Obviously referring to the
17 designation issue about his having falsely
18 certified that he had an adverse finding.

19 JUDGE SIPPEL: I see. I see.

20 MS. LEAVITT: And again, Your
21 Honor, just to move things along, the self-
22 styled notice of appearance we received at

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1 five o'clock last night, Mr. Floyd reiterates
2 his ignorance of what was going on.

3 He says at paragraph four "I was
4 told that some", quote, unquote, "were trying
5 to take", quote, unquote, "my license, instead
6 of allowing me to utilize it to help all of
7 those who were counting on me in my
8 incarceration. I allowed something like this
9 to happen to me over three years ago, but
10 refuse to allow it this time without the truth
11 being told to all. Until my release at the
12 end of 2010, I never had any contact with FCC
13 personally, nor did I try to mislead or
14 falsify anything regarding who I truly am."

15 And then, in the second to last
16 paragraph, however, he says "I did understand
17 that it," the station, "was going to be sold,
18 but that the buyer backed out," quote,
19 unquote, "of the transaction, but is now
20 saying that it was all my fault. I want you
21 to hear all sides of the story and hope that
22 then justice can be served."

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1 Obviously, in light of the
2 information that you have elicited from Mr.
3 Floyd, it seems that there are some
4 inconsistencies between what he's been telling
5 -- or representing to the Media Bureau -- that
6 he may have clarified or created more
7 confusion in his filing last night. So that's
8 the Bureau's --

9 JUDGE SIPPEL: Well, that's not in
10 evidence, that piece of paper.

11 MS. LEAVITT: No, it's not. But
12 this is --

13 JUDGE SIPPEL: But obviously, it's
14 informative, yes. Now, I'm going to ask just
15 one question, and really -- how do you explain
16 that there was a certification given to the
17 FCC that basically denied the fact or the
18 circumstances of your conviction?

19 Do I have that phrase right? Is
20 that what the document shows? It's basically,
21 you answered no to a question that was a yes
22 or no question. Somebody did, anyway.

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1 MR. FLOYD: Yes, sir. And the
2 answer to your question --

3 JUDGE SIPPEL: What's your
4 explanation for that?

5 MR. FLOYD: My explanation to
6 that, sir, is I have absolutely no idea, okay,
7 how any sort of misrepresentation could have
8 been done. Certainly by me, period, because
9 I was not there. And certainly not by my
10 wife, intentionally, to the FCC, period.

11 JUDGE SIPPEL: Well, this was
12 basically -- basically this meant checking off
13 a no box to the question. Is that correct?

14 MR. FLOYD: Yes, sir. I assume
15 so. But at the time, like I said, the
16 transaction was being handled by someone
17 besides my wife, who was working with someone
18 at supposedly Wilks's organization, in an
19 effort to sell the translator so that funds
20 could be received and help innocent parties
21 who were affected by my incarceration.

22 That did not transpire, so I

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1 wanted to know two things. Why didn't it go
2 through, and if it didn't, allow me to find
3 someone that FCC would approve for that
4 transfer, or allow me to utilize it, since I
5 have been asked to come back and recreate a
6 radio station -- I mean, excuse me sir, a talk
7 show, that I did for fifteen years, called
8 Nevada Matters during the week and America
9 Matters on weekends.

10 I've been asked to reactivate
11 that. I have chosen to do so. But the bottom
12 line is, that there are people right now who
13 could benefit the community by that
14 translator, and I don't know what happened to
15 the sale.

16 I'm not accusing anyone of
17 misrepresenting anything to FCC. All I can
18 say, Your Honor, is that my wife nor I did
19 anything to mislead anyone by purposely or
20 even indirectly checking a box like that.

21 JUDGE SIPPEL: Well, okay, but
22 that leads me back -- that's a long answer to

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1 what I thought was a short question. The box
2 was either a check of yes or no, and it was
3 checked no. And what I'm asking is, first,
4 who checked it off? If it was your --

5 MR. FLOYD: I assume -- my wife
6 just said "What box are you talking about?"
7 I assume it's on a form, correct?

8 JUDGE SIPPEL: Well, let me see.
9 Let me ask you, Bureau counsel. Would you
10 explain more what this is for him?

11 MS. LEAVITT: I think, basically,
12 the issue appears to be the assignor, Mr.
13 Floyd, the licensee, is saying he did not
14 falsely certify that he had no false -- no
15 adverse filings.

16 That raises the logical, natural,
17 inference, that if it wasn't the assignor that
18 was filling out the application, then it would
19 have been the assignee, in this case Wilks,
20 that would have certified. And I've got the
21 application here, Your Honor, just for
22 clarity's sake.

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1 It's question eight on FCC form
2 345, Assignment for Translator Station. And
3 the form says "Adverse Findings.
4 Licensee/permittee," in this case Mr. Floyd,
5 "certifies that, with respect to the
6 licensee/permittee and any party to the
7 application, no adverse finding has been made,
8 nor has an adverse final action been taken by
9 any court or administrative body in a civil or
10 criminal proceeding brought under the
11 provisions of any law related to the
12 following: any felony; mass media-related
13 antitrust or unfair competition; fraudulent
14 statements or other government unit; or
15 discrimination."

16 The fact that he was incarcerated
17 for a felony money laundering conviction would
18 have required him to respond "no" to the
19 question, and he instead -- or somebody
20 instead certified that yes, he had no adverse
21 findings.

22 And this was repeated. The

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1 certification that there was no adverse
2 finding was carried through to an assignment
3 application modification in which Wilks
4 advised the Commission that it was the
5 originating station, and would be providing
6 the programming for the translator. And then,
7 a few months later, the parties filed a
8 modification.

9 And again, it was certified there
10 was no adverse finding, when in fact -- you
11 know, I don't think it's in dispute that there
12 was. So if the assignee -- assignor, rather,
13 licensee, Mr. Floyd is saying he didn't do it,
14 the question arises, who did?

15 Logical inference would be that it
16 would be the assignee, or in this case Wilks.

17 JUDGE SIPPEL: Well, I'm still --

18 MR. ZARAGOZA: I'm happy to
19 respond, Your Honor.

20 JUDGE SIPPEL: Go ahead, Mr.
21 Zaragoza. Thank you, sir.

22 MR. ZARAGOZA: If you apply common

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1 sense to this -- and let me add one more fact.
2 As the reply to the Enforcement Bureau's
3 opposition pointed out, our law firm, as an
4 accommodation to Mrs. Floyd, completed the
5 application, which was then sent to her for
6 review and authorization for signing.

7 As far as we know that she did
8 review it, I don't know if she reviewed it
9 with Mr. Floyd over the telephone while he was
10 incarcerated or not. But we got the signature
11 page back from her without any suggestion that
12 any changes needed to be made to that section.

13 So it seems to me that pursuing
14 your very good line of questioning of Mr.
15 Floyd, and I appreciate his honesty in this,
16 is to ask Mrs. Floyd whether she received the
17 draft of the application, whether she read it,
18 whether she discussed it with her husband.

19 But all of this is -- really the
20 question is if his wife reviewed this and
21 authorized the filing of it, as we were led to
22 believe, to what degree did she inform him of

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1 what she was doing? Apparently, as he
2 mentioned earlier, he was aware of the
3 transaction, the fact that there was a
4 contract, and what have you.

5 So again, the focus is always on
6 the relationship between the person who held
7 the power of attorney and Mr. Floyd at the
8 time. And there's nothing in here that
9 implicates Wilks. It's pure speculation that
10 they knew about this conviction, which they
11 did not.

12 We have affidavits, declarations
13 in the pleadings that they did not know about
14 it. And their headquarters are located in
15 Atlanta. They don't -- they're not in Reno.

16 JUDGE SIPPEL: Yes.

17 MR. ZARAGOZA: And all the
18 negotiations occurred between, I guess, this
19 Ms. Wells, Ms. Shroeder, all over the
20 telephone, with Stephen Bradshaw of Wilks in
21 Atlanta, Georgia.

22 So again, it's pure speculation

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1 here. We're willing to cooperate, but to have
2 them kind of indirectly try to enlarge the
3 issue to implicate us simply based on -- and
4 use discovery for purposes of that kind of
5 fishing is just beyond doubt.

6 I'm beginning to get a sense in
7 this case that all of this is quite innocent.
8 And that here's a man that was incarcerated,
9 who in anticipation of that or at some point
10 gave his wife a very broad power of attorney.

11 As he mentioned over the phone, he
12 needed to generate monies, what have you.
13 They were willing to sell various assets. And
14 she was unsophisticated, and what have you.
15 They had Latham & Watkins as their counsel for
16 a while, and I think Mr. Shroeder dismissed
17 them.

18 And it was counsel at Latham that
19 told me, when I asked, you know, why isn't Mr.
20 Floyd involved here? He says "He's in a
21 coma." Now the answer is somebody told David
22 Burns at Latham and Watkins that.

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1 JUDGE SIPPEL: He was in a coma?

2 MR. ZARAGOZA: Yes. He was in a
3 coma, therefore he was hospitalized, and
4 therefore that's why his wife was handling
5 things. So I see a lot of innocence here,
6 and to go through all of this.

7 Now, having said that, it seems to
8 me what issue may remain alive in this whole
9 case is whether this conviction for money
10 laundering is disqualifying in and of itself,
11 irrespective of whether or not he
12 misrepresented.

13 But I'm not convinced there's any
14 misrepresentation here. But, rather, for you
15 to look more narrowly at the issue is should
16 this gentleman still hold a license, having
17 been convicted of money laundering, which is
18 a felony. And if that's the case, all these
19 issues go away.

20 JUDGE SIPPEL: Unless it was a
21 false filing with the Commission.

22 MR. ZARAGOZA: Well, that's true.

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1 That's true. But then the issue there is what
2 the wife knew and authorized. We're happy to
3 fully cooperate on that.

4 JUDGE SIPPEL: But that is almost
5 a separate investigation matter for the Media
6 Bureau to ferret all that out, and then decide
7 from that investigation whether or not a
8 proceeding of some kind is in order. I don't
9 want to resolve it sitting here, but it's
10 true.

11 Really, the heart of the matter
12 here is, has there been a disqualifying
13 conviction that should be addressed
14 independently of these things of which we
15 don't really know. We don't really have
16 complete answers. What would you say to that,
17 Ms. Leavitt?

18 MS. LEAVITT: Your Honor, at this
19 point, it's too early to tell. And that's the
20 gist of our opposition. At this point, there
21 are too many issues regarding the false
22 certification.

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1 Mr. Zaragoza raises a very
2 excellent point about the impact of the effect
3 of the underlying conviction on Mr. Floyd's
4 qualifications to hold the license. But
5 that's another specified issue.

6 At this point, we are looking at
7 the universe of specified issues A through E,
8 and our position is that in light -- even
9 after some clarifying statements made by the
10 licensee and Wilks's counsel, there are
11 sufficient questions that would warrant
12 retention of Wilks as a party, at least during
13 the initial stages of discovery, so that we
14 can flesh out the record

15 And maybe, at a point not too far
16 in the distant future, Wilks could renew its
17 motion for dismissal, and maybe, depending on
18 the development of the record, the Bureau
19 would not oppose it.

20 JUDGE SIPPEL: There are several -
21 - there are two things that come to my mind in
22 terms of what would remedy that situation, and

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1 one of them would be the commitment, the
2 unqualified commitment that Mr. Zaragoza has
3 given. That they will absolutely cooperate in
4 any type of discovery that you want on this
5 issue. Am I quoting you correctly?

6 MR. ZARAGOZA: Yes, sir. Wilks is
7 a licensee, so you have jurisdiction over us.

8 JUDGE SIPPEL: So they have a lot
9 to lose in that jurisdiction. And the other
10 possibility would be to dismiss them without
11 prejudice, until all these questions are
12 resolved. And I would ask Mr. Zaragoza to
13 consider that.

14 MR. ZARAGOZA: We would have no
15 objection to that.

16 MS. LEAVITT: So, Your Honor, if
17 you dismiss them without prejudice, that meant
18 that they would not be a party for discovery
19 purposes. But should, during the course of
20 discovery, we find information that would
21 warrant insertion of Wilks back in as a party,
22 the Bureau would move to do so.

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